

It appears, that the English Court of Chancery had steadily confined itself in granting relief against waste, to those cases only where there was some subsisting privity of title or contract between the parties, until about the year 1785; since which time it has gone one step further, and granted injunctions against strangers to stay trespass, in strong cases of destruction or irreparable mischief; or where the irreparable mischief might be completely effected before any trial could be had as to the controverted right. But, at that point, it seems to have come to a stand; not, however, without expressing a regret, that its jurisdiction had not been extended so far as to protect real estate from waste and injury pending a controversy about the title. I have seen no reason to doubt, that the powers of this Court in granting injunctions have been always considered as in all respects co-extensive with those of the Chancery Court of England. *Pillsworth v. Hopton*, 6 Ves. 51; *Mitchell v. Dors*, 6 Ves. 147; *Hanson v. Gardiner*, 7 Ves. 305; *Smith v. Collyer*, 8 Ves. 89; *Courthope v. Mapplesden*, 10 Ves. 290; *Crockford v. Alexander*, 15 Ves. 138; *Norway v. Rowe*, 19 Ves. 147; *Jones v. Jones*, 3 Meriv. 173.

It appears to be even yet the fixed rule of the Court of Chancery of England, that the granting of an injunction to stay waste must depend, either upon the fact of there being a privity of title or contract acknowledged by the answer; or an unquestionable legal or equitable title in the plaintiff; as where a purchaser files a bill for specific performance of his contract, suggesting, that the defendant was proceeding to cut timber, &c., an injunction may be

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It is said, however, in one of the most respectable treatises on pleadings in Chancery, that, "pending an ejectment in a Court of common law, a Court of equity will restrain the tenant in possession from committing waste, by felling timber, ploughing ancient meadow, or otherwise. Against this inconvenience a remedy at the common law was in many cases provided during the pendency of a real action, by the writ of *estrepement*; and when the proceeding by ejectment became the usual mode of trying a title to land, as the writ of *estrepement* did not apply to the case, the Courts of equity, proceeding on the same principles, supplied the defect." *Mitf. Plea*. 136. But the only authorities cited in support of what is here said are cases between landlord and tenant, where the title of the plaintiff had not been, and could not be denied by the de-